In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1229

A-OK MOTOR LINES, INC. (SAMUEL KAUFMAN, TRUSTEE IN BANKRUPTCY),
Petitioner,

vs.

NORTH ALABAMA EXPRESS, INC., ET AL.,
Respondents.

REPLY TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT

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Dated: February 28, 1979
Due Date: March 7, 1979

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The Fifth Circuit Court of Appeals held that motor carrier applicants should not be permitted to defeat or evade Section 206(a)(7)(A) of the Motor Carrier Act (49 U.S.C. § 306(a)(7)(A)), which specifically provides that such a certificate "may not be transferred apart from the transfer of the corresponding intrastate certificate" upon which the certificate of registration is based, by surrendering the intrastate certificate for cancellation; that amending the contract and application, after submission, without notice and hearing, and the "mutation of" issues from those noticed, necessarily present problems of serious magnitude". Further, that Division 3 of the Commission could only consider Section 207 applications which are "directly related" to Section 5(2) applications for purchase

because Division 1 applies a different standard in its determination of "unrelated" Section 207 applications. The petitioner necessarily argues that the Fifth Circuit was in error. The respondents submit that the decision was right and is supported by statutes and the uniform prior decisions discussed and relied upon in the opinion.

QUESTIONS PRESENTED

The questions involved may more accurately be summarized as follows:

1. Can motor carrier applicants defeat or evade 49 U.S.C. § 306(a)(7)(A) and transfer a registered certificate "apart from the transfer of the corresponding intrastate certificate" upon which it is based by surrendering the state certificate for cancellation?

2. Can Division 3 issue a motor carrier certificate under 49 U.S.C. § 307 which was noticed and heard as one "directly related" to a Section 5 transfer application where the Section 5 transfer application is denied and a different standard applies to such "unrelated" Section 207 application?

3. Can the Commission issue an order based upon a contract and application amended after submission and raising admittedly "substantively different" issues "from the previously rejected proposal"?

The respondents[1] submit that each of these questions should be answered in the negative.

1. This reply is filed on behalf of the following respondents, each of whom was a protestant throughout the Commission proceedings and petitioners in the United States Court of Appeals for the Fifth Circuit: Bowman Transportation, Inc., Georgia-Florida-Alabama Transportation Company, Floyd & Beasley Transfer Company, Inc., Hiller Truck Lines, Inc., North Alabama Express, Inc., and Bee-Line Express, Inc.

STATEMENT OF THE CASE

A-OK Motor Lines, Inc. (A-OK) was a common carrier by motor vehicle, holding a certificate authorizing the transportation of freight in intrastate commerce issued by the Alabama Public Service Commission (APSC) under the State Motor Carrier Act.[2] The intrastate certificate was registered with the ICC under Section 206(a)(7)(A) of the Federal Motor Carrier Act which permitted the transportation of interstate freight over the routes or within the area authorized by the state certificate only so long as the holder is a carrier "engaged solely within a single state". The interstate operations under such "certificates of registration" are regarded as an incident to the carrier's intrastate operations. A-OK was adjudged a bankrupt on November 7, 1970. The Trustee offered the operating rights for sale and proposed to divide the certificate among four multi-state carriers. Each sought to receive authority between Birmingham and their selected parts of Alabama. The Trustee entered into four separate but similar contracts, each being conditioned upon approval by the ICC and APSC.[3]

Since Section 206(a)(7)(A) precluded the transfer of a certificate of registration to a multi-state carrier from a carrier engaged in operations solely within a single state, the applicants filed a series of applications under an administrative approach first outlined in *C & D Motor De-*

2. Alabama Code references in this brief will refer to sections of Title 48 of the *1940 Code*, now § 37-3-1, et seq. of the *1975 Alabama Code*, unless otherwise specifically indicated. References to Federal statutes will refer to Sections of the Motor Carrier Act (49 U.S.C. § 301, et seq.) unless otherwise specifically indicated.

3. All notices were issued and all hearings were held on the basis of these contracts, so conditioned. Petitioners so admitted (Petitioners' Br. p. 4).

livery Co.—Purchase—Elliot, 38 M.C.C. 547 (1942), which, if approved, would permit the multi-state carrier to transfer the certificate of registration under Section 5 and certificate it under Section 207. In such cases, the Commission allowed such "directly related" Section 207 applications to be supported by the intrastate carrier's past operations to demonstrate the public need required by Section 207. As noted by the Fifth Circuit (A-11):

> "Thus, the burden of the applying transferee is made significantly less difficult and his chances of success in obtaining interstate authority are enhanced."

Absent the evidence of past operations of the single state transferor, the burden of meeting the statutory standard of proof of public convenience and necessity (PCN) under Section 207 admittedly was much greater.

In addition to the transfer applications filed with the APSC, each applicant filed with the ICC:

(1) An application under Section 5(2) seeking approval of the transfer of the part of the Alabama intrastate registered certificate proposed to be purchased;

(2) A Section 207 "directly related" application seeking to certificate that part of the intrastate registered certificate it was seeking to purchase; and

(3) An application under Section 210a(b) seeking temporary authority approval of a lease of the rights proposed to be acquired and certificated.

On October 30, 1972, following extensive hearings, the APSC issued an order denying the applications, finding and stating that (A-17-18):

> "When the proposed division of this authority is considered in conjunction with the authorities presently

> held by the applicants, and the tacking that would be possible, we are not being asked to approve the revival of A-OK's rights but to approve a major readjustment of the transportation industry of Alabama."

The Order of the APSC was affirmed by the unanimous decision of the Alabama Supreme Court in *Alabama Public Service Commission, et al.* v. *Cooper Transfer Company, Inc.*, decided December 18, 1975, rehearing denied February 5, 1976 295 Ala. 209, 326 So.2d 283.

On January 19, 1973, during pendency of the Alabama litigation, the Administrative Law Judge (ALJ) recommended approval of the Section 5 and directly related Section 207 applications conditioned and contingent on the provision that (A-68):

> "Prior to or concurrently with consummation of the transaction, furnish the Commission a certified copy of the state certificate as reissued to it, or if the Alabama Public Service Commission does not reissue the certificate, a certified copy of the order which approves the transfer of the intrastate certificate . . ."[4]

Exceptions of applicants and protestants were overruled by Order of Division 3 dated November 26, 1973, stating that (A-80):

> *". . . section 206(a)(7)(A) provides that certificates of registration 'may not be transferred apart from the transfer of the corresponding intrastate certificate' . . ."* (Emphasis supplied.)

While continuing the Alabama litigation, the applicants then filed their first petition for reconsideration seeking to amend the basic contracts on which the case

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4. An identical condition was included in all four cases.

was tried.[5] The applicants sought to transfer the A-OK rights "embraced in the certificates of registration, apart from the underlying corresponding intrastate rights in Alabama".[6]

By Order served May 21, 1974 (A-82), Division 3 again declared that this could not be done and emphasized that (A-84):

> ". . . this Commission has consistently refused to sanction sale of rights embodied in a certificate of registration when the purchaser would not also acquire the corresponding intrastate authority, see *Cook Motor Lines, Inc.—Purchase (Portion)—Epperly Motor Freight, Inc.*, 116 M.C.C. 300, and hence the petitions must be denied in this respect . . ."

The applicants then filed petitions under Rule 101 (a)(4) for a finding of general transportation importance (GTI), which were denied by order dated June 28, 1976 (A-89-90). Under said Commission rule this decision rendered the administrative proceeding final.

Notwithstanding the finality of the prior orders, on March 27, 1975, the applicants filed their second petition for reconsideration, claiming that the applications should be approved on the basis of a decision of the Circuit Court of Covington County, Alabama, purporting to reverse the order of the APSC.[7] The Commission again rejected the

5. Being the contracts involved in the hearing and proceedings before the ICC and in the judicial review then being prosecuted by applicants in the Alabama courts. No hearing has been held on any other contract or proposal.

6. The same proposal was denied by orders of the Commission dated November 26, 1973 and May 21, 1974 (A-78, A-82).

7. The Circuit Court decision was subsequently reversed and the order of denial by the APSC was affirmed by unanimous decision of the Alabama Supreme Court. *Alabama Public Service Commission, et al.* v. *Cooper Transfer Company, Inc., et al.*, 295 Ala. 209, 326 So.2d 283.

applicants' attempts to circumvent its orders and the Act of Congress and again declared that "this Commission has consistently refused to sanction" the sale of the interstate registered certificates apart from the intrastate certificate upon which the registration was based (A-88).

Following the unanimous decision of the Alabama Supreme Court, the applicants filed their *third* petition for reconsideration based on a *new* proposal and amended contracts to surrender and cancel the Alabama certificate and the intrastate certificates of registration sought to be transferred under Section 5, and to have Division 3 issue certificates to each of the petitioners under Section 207 applications which were "directly related" to the Section 5 applications.

Without further notice, the Commission reversed its prior orders of November 26, 1973 (A-80), May 21, 1974 (A-84), June 28, 1974 (A-90), and June 6, 1975 (A-88), and approved the new proposals. Thereupon, the protestants (respondents here) sought judicial review. In *North Alabama Express, Inc., et al.* v. *United States and I.C.C.*, 576 F.2d 679, extended 583 F.2d 779 (A-1-20), the Fifth Circuit considered the legislative history of the controlling statute, discussed all issues involved, and held that the statute (49 U.S.C. § 306(a)(7)(A)) means what it says, that a certificate of registration "may not be transferred apart from the transfer of the corresponding intrastate certificate", that an applicant cannot meet the statutory standard of Section 207 requiring proof of "the present or future public convenience and necessity" by application of an admittedly reduced and lesser standard confined to "directly related applications" and that:

> "Division 3 exceeded its authority when it reversed its prior rulings and approved the purchase carriers newly transmuted and 'unrelated' Section 207 applications."

This decision of the Fifth Circuit followed four prior decisions of Division 3 *in this case* and the multiple Commission and Court decisions cited by the Court (A-13, Fn. 9, 16-17).

Under Section 17(4) of the Interstate Commerce Act, a division of the Commission has authority only with respect "to any work, business or function assigned or referred thereto . . .". The Fifth Circuit correctly noted and quoted from *Hart* v. *Interstate Commerce Commission*, 226 F.Supp. 635, 643 (D. Minn. 1964), that (A-16):

> "Division 3 can only consider Sec. 207 applications which are 'directly related' to Section 5(2) applications for purchases, consolidations, etc."

The Fifth Circuit also noted that (A-17):

> "We do not reach the questions concerning the sufficiency of notice and whether the evidence is sufficient to support an 'unrelated' application if the testimony taken under the Elliott Doctrine were eliminated. Our decision makes such further inquiry inappropriate. On their face, however, the procedures of Division 3, including its hindsight weighing of the evidence and its mutation of the issues from those noticed, unnecessarily present problems of serious magnitude."

As noted, the order of Division 3 was based on a new factual situation and contracts different from those noted and on which the hearings were held. In fact, Division 3 stated that the ultimate proposals were "substantively different" (A-101) from those originally considered and noticed.

THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED

The Act and prior Commission decisions support the decision of the Fifth Circuit. The petitioners here sought transfer of a certificate of registration issued under Section 206(a)(7)(A) to authorize the transfer of interstate freight commensurate with the intrastate certificate upon which the registration was based. The petitioners argue that their cancellation of the Alabama intrastate certificate satisfied this statutory requirement and that cancellation of A-OK's certificate avoided the evil Congress sought to prevent when it adopted the 1962 amendments which now appear in Section 206(a)(7)(A) and Section 206(a)(6) (A-13, 576 F.2d 684).

The statute (49 U.S.C. § 306(a)(7)(A)) specifically provides that the certificate of registration:

> "May not be transferred apart from the transfer of the corresponding intrastate certificate."

On three occasions *in this case* Division 3 affirmed that the statute meant just what it plainly says. On November 26, 1973, Division 3 stated (A-80):

> "Section 206(a)(7)(A) provides that certificates of registration 'may not be transferred apart from the transfer of the corresponding intrastate certificate'."

On May 21, 1974, Division 3 exposited (A-84):

> ". . . this Commission has consistently refused to sanction sale of rights embodied in a certificate of registration when the purchaser would not also acquire the corresponding intrastate authority, see *Cook Motor Lines, Inc.—Purchase (Portion)—Epperly Motor Freight, Inc.*, 116 M.C.C. 300. . ."

On June 6, 1975, Division 3 reiterated (A-88):

> ". . . this Commission has consistently refused to sanction such sales, see *Cook Motor Lines, Inc.—Purchase (Portion)—Epperly Motor Freight, Inc.*, 116 M.C.C. 300 . . . "

Additionally, legislative history supports the Fifth Circuit decision. House Report 1090 which reported out the 1962 amendments to the House of Representatives stated:[8]

> "Under both paragraphs (6) and (7) which would be added to Section 206(a) of the Interstate Commerce Act by the bill, certificates of registration issued by the Interstate Commerce Commission would be transferable subject to the limitations contained in Section 5 of the Interstate Commerce Act dealing with carrier unifications and mergers, *but they could not be transferred apart from the intrastate rights.* A transfer of intrastate rights without a corresponding transfer of the certificate of registration would void the interstate rights." (Emphasis supplied.)

In a letter to Hon. Oren Harris, Chairman of the House Committee on Interstate and Foreign Commerce, dated July 31, 1961, the ICC, through Hon. Everett Hutchinson, stated that the certificate of registration:

> ". . . could not be transferred apart from the intrastate rights. A transfer of the intrastate rights without a corresponding transfer of the certificate of registration would void the interstate rights. *In addition, any subsequent termination of or restriction in the scope of the intrastate certificate would similarly restrict the interstate rights.*" (Emphasis supplied.)

8. See U. S. Code, *Congressional and Administrative News*, p. 3165, P. L. 87-805, 76 Stat. 911.

In its letter to Congress in connection with consideration of the amendments, the Commission added that under Section 206(a)(6):

> "The certificate would be transferable subject to the restrictions respecting the separation of the interstate and the intrastate rights."[9]

It is important to note that at the time of the enactment of the 1962 amendments, Congress specifically and emphatically rejected the so-called "Sisk Amendment" that would have continued in force the rights contained in a certificate of registration after termination or alteration by the State of the underlying State certificate, unless or until the Commission initiated a special proceeding to also terminate the certificate of registration.[10]

The decision of the Fifth Circuit also is in accord with prior administrative and judicial decisions (See A-13, including Fn. 9, 14-17).

Additionally, the applicants had available and could have long since concluded Section 207 applications (favorably or unfavorably) if they had not persisted in their efforts to pursue the reduced burden and standards applied to "directly related" applications.

The petitioner's argument that the subject decision confers on State regulatory commissions authority to nullify a decision of the Commission relating to transfer of a registered certificate neglects to note that:

> —The registered certificate exists solely by reason and "as an incident to the carrier's intrastate operations".

9. See U. S. Code, *Congressional and Administrative News*, 1962, Vol. 2, pages 3165-3172.

10. See Remarks of Mr. Harris, Floor Leader in the House of Representatives, Congressional Record, Vol. 108, Part 15, p. 20585.

—Section 206(a)(7)(A) specifically provides that the certificate of registration "may not be transferred apart from the transfer of the corresponding intrastate certificate".

—The legislative history and prior Commission and judicial decisions confirm that Sections 206(a)(6) and 206(a)(7)(A) prohibit transfer of a certificate of registration "apart from the transfer of the intrastate certificate".

—The petitioners have readily available to them the right to file a Section 207 application and to meet the statutory standards instead of persisting in efforts to evade that standard by pursuing a "directly related" application where the proof admittedly is reduced and a different standard applied.

The Fifth Circuit correctly held that Division 3 did not have authority to grant a Section 207 application "directly related" to a Section 5 application where

—The certificate of registration could not lawfully be transferred.

—The standard of proof in a "directly related" application was different from the standards applied to other Section 207 applications.

—The contracts, applications, notice and hearing were all based upon a proposal which the Commission stated was "substantively different" (A-101) and no notice was given and no hearing was held on the "substantively different" proposals.

I

The Decision Affirms What Section 206(a)(7)(A) Provides That an Interstate Certificate of Registration "May Not Be Transferred Apart From the Transfer of the Corresponding Intrastate Certificate" and That Applicants Cannot Evade the Requirements of Section 207 Without a "Directly Related" Application.

Directly contrary to the petitioner's argument, the decision of the Fifth Circuit does not impinge upon the Commission granting the petitioner's interstate operating authority. In fact, the case was remanded "with instructions that Division 3's order now under review be vacated and set aside—without prejudice to further proceedings not inconsistent with this opinion" (A-20).

In *Navajo Freight Lines, Inc.* v. *United States,* 263 F.Supp. 438 (D.C. Cal. 1967), which the petitioner erroneously described as "the only other decision arising under the 1962 amendment"[11] (Br. p. 13), the Three-Judge Court stated that the 1962 amendment to Section 306 provided:

> "The 'certificate of registration' is transferable within the limitations provided in 49 U.S.C.A. Section 5 and 49 U.S.C.A. Section 306. *It may not be transferred apart from the intrastate certificate which supports it, and if the intrastate certificate is transferred apart from the certificate of registration, the right to engage in interstate commerce is destroyed.*" (Emphasis supplied.)

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11. Cases decided directly relating to 49 U.S.C. § 306(a)(7)(A) include *Valley Express, Inc.* v. *United States,* 264 F.Supp 1006 (W.D. Wisc. 1966); *Consolidated Freightways Corp. of Del.* v. *United States,* 279 F.Supp. 111 (E.D. Idaho 1968); *A-OK Motor Lines* v. *United States,* 287 F.Supp. 828 (N.D. Ala. 1968); *Homer White, Inc.* v. *United States,* 281 F.Supp. 436 (W.D. N.Y. 1968).

The Court further stated that the 1962 amendment restricted "the transfer of the new certificate of registration without the intrastate certificate".

The reliance of petitioner on *County of Marin* v. *United States*, 356 U.S. 412, 2 L.Ed.2d 879, 78 S.Ct. 880, is misplaced. That decision involved an application by Pacific Greyhound under Section 5(2) to transfer its passenger bus operations in the San Francisco Bay area to a wholly owned subsidiary "in the hope of escaping certain (rate) practices of the state commission". The Supreme Court held that the proposed subsidiary "can by no means be deemed a carrier". As in *Marin* the decision of the Fifth Circuit "does not create a vacuum in regulation". All the petitioner has to do is publish notice of a Section 207 application or file a Section 207 application and satisfy the statutory standards of proof. It is just that simple and a great deal less expensive and time consuming than to try to evade that statutory standard.

We do not read *Marin* to hold or infer that Federal jurisdiction would be assumed "to the complete ouster of state jurisdiction". In fact, the Court specifically declined to do so. If any Federal-State relationship is here involved, the Court in *Marin* noted:

> "The Commission practices as evidenced by these cases is, in our opinion, insufficient to outweigh the apparent congressional purpose and the clear language of the statute . . . especially in this delicate area where the sustaining of federal jurisdiction leads, by statute, to the complete ouster of state authority."

Here the registered certificate is "an incident to the intrastate certificate". The statute (49 U.S.C. Section 306) specifically provides that the certificate of registration "may not be transferred apart from the corresponding

intrastate certificate", and the applicants have readily available 49 U.S.C. Section 307 to establish any need for authority.

Division 3 Can Only Consider Section 207 Applications Which Are "Directly Related" to Section 5(2) Applications for Purchases

In their final amended proposals (without notice or hearing), the petitioner proposed cancellation of the intrastate certificate and the certification of the "directly related" Section 207 application. The Fifth Circuit correctly stated:

> "Division 3 exceeded its authority when it reversed its prior rulings and approved the purchasing carriers' newly transmuted and 'unrelated' Section 207 applications. Division 3 lacks authority to decide Section 207 applications where they are not 'directly related' to a Section 5 transfer application."

The Fifth Circuit cited *Hart* v. *I.C.C.*, 226 F.Supp. 635, 643 (D. Minn. 1964) to the same effect.

It is important to note and remember that this case does not involve the proposed transfer of an interstate certificate where the question of PCN has been determined by the Commission, but it relates to the issuance of a certificate based in whole or in substantial part on operations conducted under a certificate of registration where there was no proof of any need for interstate operations except as they were indicated by the intrastate operations.

Neither the courts nor the Commission agree with the petitioner's argument that Section 17(4) would give Division 3 jurisdiction to determine an issue of PCN not "directly related" to a Section 5 application. In fact, no

division would have authority to grant a certificate on an amended contract, and an amended application "substantively different" from the original proposal without any notice or hearing. *Port Terminal R.R. Ass'n* v. *United States,* 551 F.2d 1336 (5th Cir. 1977); *Ringsby Truck Lines, Inc.* v. *United States,* 263 F.Supp. 552; *General Increase-Transcontinental,* 319 I.C.C. 792; *Eddleman* v. *United States,* 119 F.Supp. 231; *Matlack, Inc.* v. *United States,* 119 F.Supp. 617.

The separate divisions of the Commission have jurisdiction only of those matters appropriately assigned to them by the Commission. If a division could arrogate to itself powers not specifically assigned, three members could effectively make Commission policy contrary to the statute and Congressional intention.

Baggett Transportation Company v. *United States,* 116 F.Supp. 167 (N.D. Ala. 1953) involved review of an order of the Commission approving the transfer of a certificate registered under the old proviso of Section 206(a) of the Act before the 1962 amendments. The nature of the proceeding was properly noticed. The Court stated that:

> "The main thrust of plaintiff's argument is against the jurisdiction of the Commission under Section 5 of the Act to entertain an application by a multiple state certificated carrier for authority to purchase the properties of a single state carrier operating under the second proviso of Section 206(a)."

The Commission had assigned "finance applications to Division 4" and PCN applications to Division 5. Division 4 heard the finance and "directly related" PCN applications under the Elliott Doctrine which the Court cited. That case is readily distinguishable from the subject proceeding because in *Baggett* the *purchase and* the Section 207 applications were approved.

In *Hart* v. *I.C.C.,* 226 F.Supp. 635, 643 (D. Minn. 1964), the Court specifically stated and held:

> "Without a Section 5(2) application to decide Division 3 would exceed its responsibility if it decided a Section 207(a) application."

II

The Notice and All Hearings and Evidence in This Case Were Directed to a "Directly Related" Application Specifically Conditioned on Approval of the Transfer of the ICC and APSC Certificates. The Commission Could Not Lawfully Proceed With a "Substantively Different" Proposal Without Notice and Hearing.

We have previously stated that not one word of evidence was taken in this proceeding that was not "directly related" to the Section 5 application where standards admittedly different from a usual Section 207 application applies. The petitioner is wrong in stating that "no one has challenged the substantiality of the ALJ's findings" of PCN. Each of the protestants took the position throughout this proceeding that approval would seriously and adversely affect their operations. The petitioner is wrong again when he argues that the Court would have affirmed the case if the alleged findings of PCN had been adopted by Division 1. First, if any finding had been made by Division 1 it would have been under the application of completely different standards and it would not be a "directly related" application where the ALJ and Commission relied upon evidence of past operations as proof of PCN (A-66). Second, all parties would have had notice that a Section 207 "unrelated" application was to be considered and the hearing would have been conducted on that basis.

As the Fifth Circuit observed, the Commission's "mutation of issues from those noticed unnecessarily present problems of serious magnitude". How could the adoption of any findings by any Division excuse the "mutation of issues from those noticed"? How could Division 1 issue an order on a case heard by Division 3? Merely to state the propositions is to demonstrate their absurdity.

We agree with petitioner's argument (Br. p. 17, Fn. 22) that the Act makes no distinction between a "directly related" PCN application and one that is "unrelated". But the petitioner avoids noting that the Commission has historically applied different standards. The ALJ stated (A-66), and the Fifth Circuit correctly noted that:

> "Under the so-called Elliott Doctrine such a 'directly related' section 207 application may be supported by the intrastate carrier's past record to demonstrate that the present or future public convenience and necessity will be served by authorizing the interstate carrier to operate the routes. Thus the burden on the applying transferee is made significantly less difficult and his chances of success in obtaining interstate authority are enhanced."

The *Elliott* Doctrine has been uniformly applied by the Commission and judicially approved.

When the entire Commission voted on this case, it found "no issue of general transportation importance"[12] (A-90) and thereby further affirmed the order of the Commission (A-84) that:

> "This Commission has consistently refused to sanction the sale of rights embodied in a certificate of registration when the purchaser would not also acquire the

12. Much less the national importance that would justify this Court taking jurisdiction.

> corresponding intrastate authority, see *Cook Motor Lines, Inc.—Purchase (Portion)—Epperly Motor Freight, Inc.*, 116 M.C.C. 300. . ."

This application has been pending for a considerable period of time, due almost entirely to the efforts of the petitioner to obtain operating authority without an "unrelated" Section 207 application. Such an application could have been resolved long ago. In his effort to avoid meeting the standards of Section 207, the petitioner filed three petitions for reconsideration—although Commission rules provide for only one. He filed a petition for general transportation importance. He appealed from the order of the APSC and now urges the subject petition after the issues have been judicially determined by the Alabama Supreme Court and the Fifth Circuit Court of Appelas.

CONCLUSION

We respectfully submit the Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit should be denied and this litigation brought to an end.

Respectfully submitted,

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Dated: February 28, 1979